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November 3, 2004

VIA FACSIMILE – (916) 322-6440

Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Re: Agenda Item 12, FPPC Meeting of November 4, 2004

Dear Commissioners:

Our office has had a brief opportunity to review the FPPC's proposed amendments to the "Gift Cluster" Regulations, and wish to share with you our thoughts regarding the proposed changes to section 18946.2 in particular. The attachment sets forth recommended changes to the proposed amendments, as set forth below. Note that our recommendations may be distinguished from the FPPC language through the use of double-underline and double-strikeout.

1. In proposed section 18946.2(c) regarding the pro-rata share of an event's costs, we recommend replacing the language "RSVP's received or the number of attendees" with "invitees." It is generally not possible for an official to ascertain the number of people attending an event until after the event is over. For this reason, an official will not know before the event how much of a gift he or she will receive upon attending. For certain high-profile events, such as the Super Bowl Commissioner's Party held in San Diego several years ago, and discussed in the FPPC's October 25, 2004, Memorandum, a determination of the pro-rata value of the event after the event has taken place may place officials in the position of receiving a larger gift than they were comfortable receiving. In other words, they wouldn't have attended had they known the reportable value of doing so. To the greatest extent possible, the regulation should allow the official the opportunity to base the decision on whether or not to attend the event on factors that are known before the event takes place, rather than after the event has already occurred and already been attended by the official. Although every invitee may not actually attend the event, it may be a more reasonable factor than the number of actual attendees because it is determinable prior to the event.

Fair Political Practices
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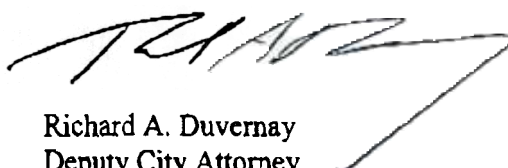
November 3, 2004

2. In proposed section 18946.2(e), regarding drop-in visits, we recommend eliminating some of the criteria that is open to criticism for ambiguity. For example, a "brief period of time" may reasonably mean different things to different people, and is not relative to the actual length of the event. We therefore recommend a more finite time, such as one-quarter of the scheduled length of the event. Similarly, we recommend avoiding language such as "minimal appetizers and drinks" and "refreshments." Such language does not inform the official as to how much is too much. We prefer a brighter line that is clearer to understand: no food and no beverage. If the visit is truly a "drop-in" visit, the official should not feel obligated to partake in any of the tangible benefits of the event.

3. We recommend moving the definition of "entertainment" to its own subsection. This term appears in two of the regulation's subsections and thus it may be more prudent to have it stand on its own rather than be defined within only one of the subsections. We have added a new subsection (g) to illustrate this recommendation.

CASEY GWINN, City Attorney

By


Richard A. Duvernay
Deputy City Attorney

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Enclosure

Amend 2 Cal. Code Regs. section 18946.2 as follows:

§18946.2. Reporting and Valuation of Gifts: Testimonial Dinners and Events, Invitation Only Events, and Ceremonial Functions.

(a) Testimonial Dinners. When an official or candidate is honored at a testimonial dinner or similar event, at which campaign fundraising for the official or candidate does not occur, the value received is the official's or candidate's pro rata share of the cost of the event, plus the value of any specific ~~tangible gift item~~ item that is presented to the official or candidate at the event.

{DECISION POINT 3:} [(b) Invitation-Only Events. Except as provided in subdivisions (d) through (f) when an official or candidate attends an invitation-only event such as a banquet, party, gala, celebration, or other similar function, other than a nonprofit or political fundraiser as set forth in regulation 18946.4, the value is the official's or candidate's pro rata share of the cost of the event, plus the value of any specific item that is presented to the official or candidate at the event.]

{DECISION POINT 4:} [(c) "Pro rata share of the cost of the event" includes the cost of all food and beverages, rent of the facilities, decorations, entertainment, and all other costs associated with holding the event, divided by the number of invitees ~~RSVP's received or the number of attendees.~~

{DECISION POINT 5:} [(d) Official or Ceremonial Functions. When an official performs an official or ceremonial function at an invitation-only event, as set forth in subdivision (b) above, in which the official is invited to participate by the event's sponsor or organizer by virtue of the official's position, and the official performs the act as an official function of the position held by

that official, the value is the cost of any food or beverages provided to the official plus the value of any specific item that is presented to the official at the event.]

{DECISION POINT 6:} [(e) Drop-In Visit. Except as provided in subdivision (f) below, if an official attends an event referred to in subdivision (a) or (b) above, and attends for but does not attend for a period of time that is greater than one quarter (1/4) of the time scheduled for the event, does not consume any food or beverage at the event, and does not stay for any entertainment provided at the event, the pro-rata valuation method does not apply and valuation for the event shall be determined to include only the value of any specific item that is presented to the official at the event. ~~{OPTION 1: alternative 1} [a brief period of time] (alternative 2) [30/45/60 minutes or less] and does not stay for any meal or entertainment provided at the event and receives only {OPTION 2: alternative 1} [minimal appetizers and drinks] (alternative 2) [refreshments and non-cash nominal benefits], the pro-rata valuation method does not apply, and the value of the gift received is the cost of the {OPTION 2: alternative 1} [food and beverage] (alternative 2) [refreshments and non-cash nominal benefits] consumed by the official and guests accompanying the official, plus the value of any specific item that is presented to the official at the event. For purposes of this subdivision, "entertainment" means a primary show or performance intended for an audience, including a dance, and does not include music provided for background ambience.]~~

{DECISION POINT 7:} [(f) Lobbyists, Lobbying Firms, and Lobbyist Employers. Where an official attends an event referred to in subdivision (a) or (b) above, sponsored by any person required to file a periodic statement under Article 1 of Chapter 6 of this title, the value of the gifts is determined pursuant to the provisions of regulation 18640.]

(g) For purposes of this section, "entertainment" means a primary show or performance intended for an audience, including a dance, and does not include music provided for background ambiance.